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CITY OF BEAUMONT; FRANK COE;

7 GREG FAGAN

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10  
11 SCOT DAVIS, BRIAN FORD and  
JEREMY HARRIS,

12 Plaintiffs,

13 vs.

14 CITY OF BEAUMONT,  
15 et al.,

16 Defendants.

CASE NO. CV 12-04990 ABC (SHx)

**NOTICE OF MOTION AND  
MOTION TO DISMISS  
COMPLAINT**

Trial Date: None Set

17  
18 TO ALL PLAINTIFFS HEREIN THROUGH THEIR ATTORNEYS OF RECORD  
19 AND THIS HONORABLE COURT:

20 PLEASE TAKE NOTICE that on August 27, 2012, at 10:00 am. in  
21 Courtroom 680 located at the United States District Court, 255 East Temple Street,  
22 Los Angeles, California, defendants, CITY OF BEAUMONT, FRANK COE and  
23 GREG FAGAN, and each of them, shall move the court for the dismissal of certain  
24 portions of the complaint as against certain defendants, as further set forth below.

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1 This Motion is brought pursuant to Fed. Rule of Civ. Proc. 12(b)(6) and is  
2 supported by this Notice, the Motion appended below, and the Memorandum of  
3 Points and Authorities submitted herewith, the Court's own file, and such other and  
4 further evidence and argument as the Court may deem fit to consider.

5 DATED: July 20, 2012

LEWIS BRISBOIS BISGAARD & SMITH LLP

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8 By: 

Arthur K. Cunningham

9 Attorneys for Defendants, CITY OF  
10 BEAUMONT; FRANK COE; GREG  
11 FAGAN  
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**MOTION TO DISMISS**

Defendants move to dismiss any and all of the following claims for relief as to each plaintiff on the ground that they do not state a claim upon which relief may be granted as against the defendant(s), and each of them, pursuant to FRCP 12(b)(6):

On behalf of defendant, Greg Fagan, as to all plaintiffs:

1. Claim # 1, 42 USC Sec. 1983
2. Claim # 2, FMLA retaliation
3. Claim # 3, State law retaliation
4. Claim # 4, [Gov. Code Secs. 3502, 3506]

On behalf of defendant, Frank Coe, as to all plaintiffs:

1. Claim # 1, 42 USC Sec. 1983
2. Claim # 2, FMLA retaliation
3. Claim # 3, State law retaliation
4. Claim # 4, [Gov. Code Secs. 3502, 3506]

On behalf of defendant, City of Beaumont, as to all plaintiffs:

1. Claim # 1, 42 USC Sec. 1983
2. Claim # 2, FMLA retaliation
3. Claim # 3, State law retaliation
4. Claim # 4, [Gov. Code Secs. 3502, 3506]

DATED: July 20, 2012

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 

Arthur K. Cunningham  
Attorneys for Defendants, CITY OF  
BEAUMONT; FRANK COE; GREG  
FAGAN

**MEMORANDUM OF POINTS AND AUTHORITIES**

**SUMMARY OF ARGUMENT**

Defendants demonstrate below that plaintiffs (1) did not engage in protected First Amendment activity; (2) do not allege a claim for retaliation; (3) do not allege proper claims against the individual defendants; (4) do not allege claims of violation of their right to engage in political activity; and (5) do not allege retaliation or discrimination based on a position as an officer in a collective bargaining unit.

The complaint does not allege any valid claims against any defendant herein under any theory set for therein; and defendants demonstrate that amendment would be futile.

**1. CLAIMS FOR RELIEF**

1. “42 USC 1983” [retaliation for speech-related activities]
2. FMLA interference/retaliation [¶ 29 USC Sec. 2615]
3. State-Law Retaliation [Gov. Code Secs. 3302, 3309.5, 3502, 3502.1, 3506 retaliation for conducting “political activity”]
4. State Law Retaliation [Gov. Code Secs 3502, 3506 - retaliated against as officer of bargaining unit]

**2. ALLEGATIONS OF COMPLAINT**

The complaint alleges as follows (where appropriate, either to demonstrate the absence of elements of proof, or for purposes of showing the futility of amendment, defendants offer parenthetical comments, below):

The City of Beaumont delegated its policy-making authority to Coe and Fagan and adopted and ratified actions of them as its own policies [¶¶ 3-5].

Plaintiffs are police officers entitled to the benefits of the POBR [¶ 6].

“BPOA” is the bargaining unit for police officers with the City of Beaumont [¶ 11].

Davis was hired in October 2007 as a corporal. He was competent and received numerous commendations, etc. [¶ 12]. Ford was hired in March 2008 as a

1 police officer and received “numerous promotions and commendations” [¶ 13].  
 2 Harris was hired as a corporal in January 2009, and received commendations, etc. [¶  
 3 15].

4 In April 2011, BPOA voted to conduct an evaluation of Coe; Davis and Ford  
 5 “spoke out” at the meeting and supported the evaluation [¶ 15]. On April 20, 2011,  
 6 BPOA sent a letter to City Manager Kapanicas, criticizing Coe’s performance. No  
 7 specifics as to those criticisms are set forth in the Complaint. Some of the statements  
 8 in the letter were made by Harris and Davis [¶ 16].

9 On information and belief, Coe was furious about the letter and initiated a  
 10 campaign to retaliate and discriminate. He attempted to “compel” the Association to  
 11 identify the complainants [who were anonymous in the letter]. On information and  
 12 belief, Coe was aware the plaintiffs had taken an active role in the letter [¶ 17].

13 In March 2011 (prior to the letter), vacancies for sergeant positions were  
 14 announced. Davis and two other BPOA members applied. Coe then announced he  
 15 would open the process to lateral applicants [¶ 18].

16 After BPOA objected, Coe left the positions vacant, and told “Association  
 17 members” (i.e., officers in the Department) that the positions were no longer open. It  
 18 was later discovered that Coe had “offered” both positions to outside applicants  
 19 prior to opening the positions to outside applicants. Coe made several changes to the  
 20 application process [¶ 19]. (It is not alleged that any outside applicants were, in fact,  
 21 hired.)

22 The actions were “unlawful” and “pretext.” Corporals are now being sent to  
 23 leadership training and a policy was instituted to have corporals fill in for sergeants  
 24 when no sergeants are available. “This is simply a demotion by another name.” [¶  
 25 20] (Note: While the complaint uses the term “demotion,” there is no factual  
 26 allegation that anyone was demoted. The complaint also does not allege that anyone  
 27 was promoted to the sergeant’s positions instead of plaintiffs, and thus does not  
 28 allege any discriminatory or retaliatory conduct. Further, the Complaint does not



1 and cannot allege that these plaintiffs were entitled by experience, education or  
 2 performance in the testing process to these positions. Should the matter proceed  
 3 beyond the pleading stage, the court will learn that when the sergeants' positions  
 4 were eventually filled, one of those promoted was the head of the BPOA.)

5 Immediately after their "Associational speech" the plaintiffs were subjected to  
 6 "increasingly harsh discipline". After the letter to the City Manager, Coe "instituted  
 7 what he called a zero tolerance policy for discipline" [¶ 21].

8 **A. DAVIS**

9 In January 2011, Davis was assigned to investigate a shooting. Fagan  
 10 instructed him to arrest and book a witness for lying; however, Davis believed the  
 11 witness. Fagan "became angry and "threatened Davis' employment" and Coe later  
 12 defended Fagan's actions [¶ 23]. (This is the only allegation of any alleged conduct  
 13 by Fagan in the complaint, and it does not allege any *adverse action* by Fagan  
 14 (discipline, demotion, termination, etc.; and there is no allegation in the Complaint  
 15 against Fagan by the other two plaintiffs, at all.)

16 In April after the vote Coe called Davis into his office and in a three hour  
 17 conversation told Davis he would never be a sergeant at BPD. He told Davis he did  
 18 not care about Davis' critique of him, and he could "put it in the newspaper for all  
 19 he cared" [¶ 24]. (The complaint does not allege *why* Coe made the alleged  
 20 statement; and the allegation "put it in the newspaper" does not support an inference  
 21 that Coe was concerned about the letter's contents.)

22 The same day, Comdr. Beard called Davis into his office and covered a  
 23 similar subject matter. Beard told Davis that he was a rogue employee and  
 24 responsible for the morale issues in the Department. He said Davis would not be  
 25 promoted since to do so would reward bad behavior [¶ 25].

26 Davis was subpoenaed to appear at a preliminary hearing on a criminal case  
 27 on June 6, 2011 [¶ 26]. He told the subpoena clerk to ask that the DA postpone the  
 28 hearing since he intended to be on FMLA leave. The clerk erroneously failed to

1 notify the DA's office until June 16 [¶ 27].

2 On June 17, Sgt. Keyser called Davis and ordered him to go to the hearing in  
3 Murrieta although he was on FMLA leave. He went to court but was not called as a  
4 witness [¶ 28].

5 Davis was "notified" on July 13 that he was being demoted and suspended for  
6 (40) hours for failing to arrive on time to court while on FMLA leave. No other  
7 officer had been disciplined for such behavior and others who missed court entirely  
8 were given a written reprimand only [¶ 30]. (Although the Complaint alleges that he  
9 was "notified" of discipline, the Complaint does not allege that such discipline was,  
10 in fact, imposed. No discipline was, in fact, imposed.)

11 On August 25, 2011, Davis had surgery for a shoulder injury [¶ 31]. He  
12 returned to work on October 24 on light duty. He was "performing duties normally  
13 assigned to civilians" in contravention to Lt. Shuler's memo of September 7, 2010.  
14 He was singled out for this treatment. He was required to wear a necktie although it  
15 aggravated his injury, without explanation [¶ 32].

16 **B. FORD**

17 Ford conducted a traffic stop on August 15, 2011 (i.e., four months post-  
18 meeting/letter). The citizen complained; a sergeant spoke to the complainant. The  
19 sergeant "mishandled the investigation" and Ford was disciplined for discourtesy to  
20 the sergeant [¶ 34]. Ford was given notice of a 30 day suspension and was  
21 "subsequently discipline[d]". [¶ 35]. No other officer has been disciplined so harshly  
22 for similar offenses [¶ 36]. (Although the Complaint alleges that he was "notified"  
23 of discipline, the Complaint does not allege that such harsh discipline was, in fact,  
24 imposed. The nature of the discipline is not alleged; nor is the fact that the  
25 disciplinary matter was the subject of a settlement between the City and Ford.)

26 ///

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28 ///

1 **C. HARRIS**

2 Harris had not been a discipline problem. On July 5, 2011, Harris' wife  
 3 dropped him off and illegal window tint was noted (the Complaint indicates that this  
 4 was true) [¶ 38]. On July 13, 2011, Harris was "given notice" that he was being  
 5 demoted and suspended for 40 hours for "failing to remove the window tint on his  
 6 wife's vehicle" [¶ 40]. No other officer has ever been disciplined so harshly for  
 7 failing to correct a minor Vehicle Code equipment violation on "their spouse's  
 8 vehicle". This was retaliatory. [¶ 40]. (Although the Complaint alleges that he was  
 9 "notified" of discipline, the Complaint does not allege that such harsh discipline  
 10 was, in fact, imposed. The nature of the discipline actually imposed is not alleged;  
 11 nor is the fact that the disciplinary matter was the subject of a settlement between  
 12 the City and Harris.)

13 The defendants retaliated against the plaintiffs for failing to promote them to  
 14 sergeant and retaliated against them for their activities as "President and Vice-  
 15 President of the Baldwin Park (sic) POA" [¶ 42]. (There is no allegation in the  
 16 complaint that any plaintiff was an executive officer in the Beaumont Peace Officers  
 17 Association.)

18 **3. FED. R. CIV. P. 12(b) (6) PROVIDES THE COURT WITH THE**  
 19 **AUTHORITY TO DISMISS CERTAIN CLAIMS AGAINST DEFENDANTS**

20 A motion to dismiss tests the sufficiency of the complaint. A complaint may  
 21 be dismissed for failure to state a claim based on the lack of a cognizable legal  
 22 theory or the absence of facts alleged under such a theory. Balistreri vs Pacifica  
 23 Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). Dismissal is proper where "it  
 24 appears beyond doubt that plaintiff can prove no set of facts in support of his claim  
 25 which would entitle him to relief." Conley vs Gibson, 355 U.S. 41, 45-46 (1957);  
 26 Moore vs City of Costa Mesa, 886 F.2d 260, 262 (9th Cir. 1989).

27 A complaint need not plead detailed factual allegations, but the complaint  
 28 must contain enough facts to establish a plausible entitlement to relief that is more

1 than merely speculative. Ashcroft vs Iqbal, 556 U.S. 662, 681 (2009). A pleading  
 2 will be rejected if it offers labels, conclusions, or a formulaic recitation of the  
 3 elements of a claim for relief. Id. Plaintiffs must "nudge" their claims across the line  
 4 from conceivable to plausible. Bell Atl. Corp. vs Twombly, 550 U.S. 544, 570  
 5 (2007).

#### 6 4. RETALIATION CLAIM

7 A retaliation claim requires, at a minimum, a protected First Amendment  
 8 exercise by plaintiffs, adverse action against the plaintiffs, and a causal connection  
 9 between the two. Eng v Cooley, 552 F.3d 1062, 1070.

10 The Complaint does not allege a First Amendment claim in any event under  
 11 Deroschers v City of San Bernardino, 572 F.3d 703, 711 (9<sup>th</sup> Cir. 2009). In  
 12 Deroschers, City police officers registered complaints about the management  
 13 practices of a police lieutenant and described him as a micro-manager and a bully.  
 14 The Court held that the alleged First Amendment activities of the plaintiffs were  
 15 grievances "amount[ing] to a laundry list of reasons why [plaintiffs] found working  
 16 for [their supervisor] to be an unpleasant experience. In short, they thought their  
 17 boss was a bully and said so." (*Id.* At 713-14).

18 As Deroschers points out,

19 "[W]hen working for the government, saying one's boss is a bully does  
 20 not necessarily a constitutional case make. "[T]he content of the  
 21 communication must be of broader societal concern. [Our] focus must  
 22 be upon whether the public or community is likely to be truly interested  
 23 in the particular expression, or whether it is more properly viewed as  
 24 essentially a private grievance." On the facts of this case, we cannot say  
 25 that the public would be truly interested that two police sergeants  
 26 believed their supervisor was a "micro-manager," "autocratic" and  
 27 "controlling," or even that he dressed them down in front of their  
 28 colleagues and neighboring police forces. Such speech, "if released to

the public, would convey no information at all other than the fact that [two] employee[s were] upset with the status quo," [], and is of no relevance "beyond the employee[s'] bureaucratic niche," []. On numerous occasions, our sister circuits have suggested that complaints of this nature would not trigger constitutional protection. See Taylor v. Carmouche, 214 F.3d 788, 789, 792 (7th Cir. 2000) (explaining that speech "concern[ing] supervisory management styles" would be unprotected); Kennedy v. Tangipahoa Parish Library Bd. of Control, 224 F.3d 359, 374 (5th Cir. 2000) (noting that "criticiz[ing] the management style or job performance of [a] direct superior" would cut against a public concern finding), *abrogated on other grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007); Gardetto v. Mason, 100 F.3d 803, 814 (10th Cir. 1996) ("Management practices or decisions allocating management responsibility to particular individuals also do not involve matters of public concern."); see also Brooks v. Univ. of Wis. Bd. of Regents, 406 F.3d 476, 480 (7th Cir. 2005) (describing "infighting" and decisions which "undermine" an individual's "control of a department" as "a classic personnel struggle"). Indeed, to hold otherwise here would be to create the potential for litigation in every workplace gripe exchanged around the water cooler." (*Id.* at 713-714, footnotes and citations omitted).

Just so here. The Complaint does not allege First Amendment activity beyond registering complaints about the workplace, and as Deroschers noted, turning every internal complaint in public employment into a constitutional issue is unnecessary and unwise.

Further, even were the plaintiffs to have engaged in protected activity, no *prima facie* case of retaliation has been made.



1       ***Lack of Temporal Nexus.*** For example, in Erickson v Pierce County, 960  
 2 F.2d 801, 803 (9<sup>th</sup> Cir. 1992) the 9<sup>th</sup> Circuit affirmed the trial court's judgment  
 3 notwithstanding the verdict in plaintiff's favor; finding no retaliation where there  
 4 was a three month gap between the alleged first amendment exercise and an adverse  
 5 action. Here the allegedly retaliatory "notification" of discipline occurred several  
 6 months after the April letter.

7       ***Lack of Adverse Action.*** No adverse action by Commander Fagan is alleged  
 8 at all (he is alleged to have become angry at Davis, only, and in January 2011 (the  
 9 letter was in April 2011). As to Chief Coe, there are allegations of "notice" of harsh  
 10 discipline, but no allegations that such discipline was, indeed, imposed or that the  
 11 discipline *actually* imposed, if any, was out of line with similar violations of  
 12 departmental policy.

13       ***Lack of Retaliatory Animus.*** There is no allegation that Commander Fagan  
 14 knew of the letter or developed a retaliatory mindset because of it. The allegation  
 15 "on information and belief" that Coe was angry about the letter is directly  
 16 contradicted by the allegations of the complaint itself, wherein it is alleged directly  
 17 that Chief Coe told Davis that he did not care about Davis' critique of him, and  
 18 Davis could "put it in the newspaper for all he cared" [¶ 24].

19       The failure to promote component of the claim dies because no allegation is  
 20 made that the three plaintiffs were qualified for the position of sergeant by  
 21 experience, education or test scores.

22       **5. Claim No. 2 - Davis' FMLA Claim**

23       This claim is made solely by plaintiff Davis.

24       The individual defendants are not liable as a matter of law. Only the employer  
 25 is liable for claims arising under FMLA ("It shall be unlawful for *any employer* to  
 26 interfere with, restrain, or deny the exercise of or the attempt to exercise, any right  
 27 provided under this title" (29 USC Sec. 2615, emphasis added).

28       ///

1 There is a split of authority as to whether public employees qualify as  
 2 "employer[s]" and hence may be held individually liable under the FMLA. The Fifth  
 3 and Eighth Circuits have held that public employees may be sued in their individual  
 4 capacities under the FMLA if, for example, they exercise hiring and firing authority.  
 5 See Modica v. Taylor, 465 F.3d 174, 184-87 (5th Cir. 2006); Darby v. Bratch, 287  
 6 F.3d 673, 681 (8th Cir. 2002). The Sixth and the Eleventh Circuits have reached the  
 7 opposite conclusion. See Mitchell v. Chapman, 343 F.3d 811, 825-33 (6th Cir.  
 8 2003); Wascura v. Carver, 169 F.3d 683, 685-87 (11th Cir. 1999).

9 Even those few Circuits who have held that individuals can be liable limit  
 10 liability to those who have the authority to hire and fire. As the plaintiffs are police  
 11 officers with civil service protections und the Peace Officers Bill of Rights,  
 12 individual employees do not have the authority, in themselves, to hire or fire, and  
 13 Cmdr. Fagan, who is by definition not the Chief of the Department, clearly does not  
 14 have such authority.

15 Since the City is a proper defendant as to FMLA claims, adding the  
 16 individuals is not necessary to ensure that a plaintiff can, in a meritorious FMLA  
 17 case, obtain damages. Defendants submit that under the circumstances, the FMLA  
 18 claims against the individuals should be dismissed.

19 Further, plaintiff Davis makes no claim that he suffered injury or damage as a  
 20 result of having to appear in response to a subpoena (which was issued by a separate  
 21 agency, the District Attorney, see ¶s 26-27). He does not allege that he was *actually*  
 22 *disciplined* for failing to respond to the subpoena.

23 On these grounds, the claim of Davis under FMLA is untenable and must be  
 24 dismissed.

### 25 **6. Claim No. 3 - State Law Retaliation Claim**

26 Plaintiff's claim is explicitly based on Gov. Code Sec. 3302, which provides  
 27 that peace officers may not be coerced into engaging in, or prohibited from engaging  
 28 in, political activity [Complaint, ¶ 54]. Nothing in the Complaint refers to any

1 political activity by a plaintiff herein (cf. Heuer v. City of San Francisco, 2011 U.S.  
 2 Dist. LEXIS 131204 (N.D. Cal. 2011), wherein Plaintiff alleged (ultimately  
 3 unsuccessfully) that the Sheriff did not promote him to Lieutenant "because of  
 4 [plaintiff's] political activities in *openly and actively supporting Defendant*  
 5 *Hennessey's competitor in the race for San Francisco Sheriff*." No such political  
 6 activity is alleged in this Complaint.)

7 As noted above, no actionable adverse action is alleged by any plaintiff upon  
 8 which a claim under this section could be based.

9 Further, since the claim is brought under the Peace Officers' Bill of Rights,  
 10 the only proper defendant would be the public employer, not individual co-  
 11 employees such as Cdr. Fagan or the Chief (see, e.g., Gov. Code Secs. 3502  
 12 (describing employee-employer relations); 3502.1 (which refers to actions only an  
 13 employer can take); 3506 (restraining the actions of "[p]ublic agencies and  
 14 employee organizations").

15 Even if the claims arising under Sec. 3302 were facially valid, the only proper  
 16 defendant would be the City and the individual defendants must be dismissed.

17 **7. Claim No. 4 - Claim under Meyers-Milias-Brown Act**

18 A claim under Gov. Code Sec. 3502.1 arises when a public employee is  
 19 subjected to punitive action or denied promotion because of their status as an  
 20 "elected, appointed or recognized representative of any employee bargaining unit."  
 21 The complaint does not allege that any of the plaintiffs were in such positions with  
 22 the City's police officers' bargaining unit.

23 As noted above, no actionable adverse action is alleged by any plaintiff upon  
 24 which a claim under this section could be based.

25 Further, since the claim is brought under the Peace Officers' Bill of Rights,  
 26 the only proper defendant would be the public employer, not individual co-  
 27 employees such as Cdr. Fagan or the Chief (see, e.g., Gov. Code Secs. 3502  
 28 (describing employee-employer relations); 3502.1 (which refers to actions only an



1 employer can take); 3506 (restraining the actions of “[p]ublic agencies and  
2 employee organizations”).

### 3 **8. Request for Injunctive Relief**

4 As to the requests for injunctive relief, there is no allegation that there are  
5 ongoing disciplinary matters to be restrained (as noted, there is no actual allegation  
6 that improper discipline has been *imposed* on any plaintiff or that discipline  
7 proceedings are pending against any of them) or an open promotions process in  
8 which to intervene, and therefore, the case-or-controversy requirement for  
9 jurisdiction under 28 USC Sec. 2201 is absent (see, e.g., Gustafson v Poitra (2009,  
10 DC ND) 626 F.Supp.2d 1008).

### 11 **9. Futility of Amendment**

12 Defendants contend that amendment would be futile. Of the disciplinary  
13 matters alleged in the complaint, no discipline was imposed as to Davis, and the  
14 discipline imposed on Harris and Ford was the subject of a written settlement  
15 agreement.

16 As to the claim of discriminatory failure to promote, the then-President of the  
17 BPOA was promoted to sergeant as part of the process about which the plaintiffs  
18 complain. None of the plaintiffs qualified for promotion.

19 There is no basis for a claim for relief as against the defendants on the part of  
20 any plaintiff herein.

## 21 **CONCLUSION**

22 The plaintiffs’ allegations do not set forth a claim for retaliation under the  
23 First Amendment or any provision of state law.

24 The plaintiff’s allegations do not state a claim of any kind against Cdr. Fagan.

25 The plaintiff’s allegations do not state a claim against Chief Coe under state  
26 or federal law.

27 ///

28 ///

1       Upon the grounds set forth in this motion, the defendants request that the  
2 Complaint be dismissed in its entirety, or, in the alternative, that the individual  
3 defendants be dismissed from the various plaintiffs' claims.

4 DATED: July 20, 2012

LEWIS BRISBOIS BISGAARD & SMITH LLP

5  
6  
7 By: 

Arthur K. Cunningham

8 Attorneys for Defendants, CITY OF  
9 BEAUMONT; FRANK COE; GREG  
10 FAGAN  
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**FEDERAL COURT PROOF OF SERVICE**

Davis, et al. v City of Beaumont, et al. - File No. 25401.tba

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 650 East Hospitality Lane, Suite 600, San Bernardino, CA 92408. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On July 20, 2012, I served the following document(s): NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Michael A. McGill, Esquire  
Christopher A. Gaspard  
LACKIE DAMMIER & MCGILL  
APC  
367 North Second Avenue  
Upland, California 91786  
(909) 985-4003  
(909) 985-3299 (fax)  
Michael A. McGill  
[mcgill@policeattorney.com](mailto:mcgill@policeattorney.com)  
[chris@policeattorney.com](mailto:chris@policeattorney.com)

The documents were served by the following means:

- ☐ (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and I deposited the sealed envelope or package with the U.S. Postal Service, with the postage fully prepaid.
- ☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

I declare under penalty of perjury under the laws of the State of CALIFORNIA that the foregoing is true and correct.

Executed on July 20, 2012, at San Bernardino, California.

  
SHARON DENISE MOORE